

E FILED ON 5/4/10
THOMAS E. CROWE, ESQ.
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Attorney for Movants Virginia Springall-Smith and Shane Smith

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

THE RHODES COMPANIES, LLC,)
)
)
)
Debtor.)
_____)

BANKRUPTCY NUMBER:
BK-S-09-14814-LBR
Chapter 11
Date: 5/11/10
Time: 1:30 p.m.

**REPLY TO DEBTOR'S OPPOSITION TO MOTION FOR RELIEF FROM STAY FILED
BY VIRGINIA SPRINGALL-SMITH AND SHANE SMITH**

Comes now, Movants, and through their attorney, THOMAS E. CROWE, ESQ., and replies Debtor's Opposition to Motion for Relief From Stay Filed by Virginia Springall-Smith and Shane Smith [hereinafter "Movants"]. Said reply is made and based upon the Points and Authorities attached hereto, the pleadings and papers on file herein and oral argument at the time of hearing of this matter.

DATED this 4th day of May, 2010.

THOMAS E. CROWE PROFESSIONAL
CORPORATION

By/s/ THOMAS E. CROWE
THOMAS E. CROWE, ESQ.
7381 W. Charleston Blvd.
Suite 110
Las Vegas, Nevada 89117
Attorney for Movants

POINTS AND AUTHORITIES

The motion seeks to retroactively annul the stay to allow Movant Mr. Smith to join in the already pending action against Debtor's insurer. The motion does not seek relief as to the Debtor or pursuit of any action against Debtor. The stay was lifted as to Movant Shane Smith's wife, See Exhibit 1, Order of October 28, 2009. The Motion was filed prior to the notice of the Confirmation of the Debtor's Plan. Movant agrees that the stay no longer applies. Debtor argues, however, that the permanent discharge bars action against Debtor's insurance company.

The insurer of Debtor has an independent third-party responsibility to claimants against Debtor under Nevada law, which is not subject to the discharge. The Motion seeks only the opportunity for Mr. Smith to join his loss of consortium claim in the already pending action, which impacts only the Debtor's insurer. 11 U.S.C. §524(e) provides:

Except as provided in subsection(a)(3) of this section, discharge of a debt of the Debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt.

The Ninth Circuit has "repeatedly held, without exception, that §524(e) precludes Bankruptcy courts from discharging the liability of non Debtors." See In re Lowenschuss, 67 F. 3d 1394 (9th Cir. 1995). The injunction contained in Article VIII. H of the Plan, aside from not being in accord with the procedures required under the Local Rules, also does not act as a bar against the independent action against the insurer. The Ninth Circuit has noted that the addition of §524(g) as part of the Bankruptcy Reform Act of 1994, supports its conclusion in Lowenschuss, and this Circuit has expressly rejected the Fourth Circuit's decision in In re A.H. Robins Co., Inc., 880 F. 2d 694 (4th Cir. 1989).

The Movant seeks an Order from the Court that the discharge does not now bar him from independently pursuing the insurer and that no stay or discharge injunction here applies.

Therefore, Movants respectfully request that Debtor's Opposition to Motion for Relief From Stay Filed by Virginia Springall-Smith and Shane Smith be denied.

DATED this 4th day of May, 2010.

Respectfully Submitted,

**THOMAS E. CROWE PROFESSIONAL
LAW CORPORATION**

**/s/ THOMAS E. CROWE
THOMAS E. CROWE, ESQ.
Nevada State Bar No. 3048
7381 W. Charleston Blvd.
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Las Vegas, NV 89117
Attorney for Movants**

**CERTIFICATE OF MAILING OF RE: REPLY TO DEBTOR'S OPPOSITION TO
MOTION FOR RELIEF FROM STAY FILED BY VIRGINIA SPRINGALL-SMITH AND
SHANE SMITH**

I, PAMELA POULSEN, hereby certify that a copy of the Reply to Debtor's Opposition to Motion for Relief From Stay Filed by Virginia Springall-Smith and Shane Smith, filed herein, in the above-entitled case, was mailed by me on the 5th day of May, 2010, by depositing copies thereof in a sealed envelope, first-class postage prepaid, in the United States Mail, to the parties and addresses as follows:

THE HARTFORD
P.O. Box 14267
Lexington, KY n 4-512
Claim CA0007545721

Zachariah Larson, Esq.
810 S. Casino Center Blvd., Suite 104
Las Vegas, NV 89101

DATED this 4th day of May, 2010.

/s/ PAMELA POULSEN
PAMELA POULSEN, an employee of
THOMAS E. CROWE PROFESSIONAL
LAW CORPORATION

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Entered on Docket
October 28, 2009

Hon. Linda B. Riegler
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

THE RHODES COMPANIES, LLC, aka
"Rhodes Homes," et al.,

Debtors.

Case No.: BK-S-09-14814-LBR
(Jointly Administered)

Chapter 11

Affects:

- ☐ All Debtors
☒ Affects the following Debtor(s)
Gung-Ho Concrete, LLC

Hearing Date: October 19, 2009
Hearing Time: 9:30 a.m.
Courtroom 1

**ORDER APPROVING AMENDED MOTION FOR RELIEF FROM STAY FILED BY
VIRGINIA SPRINGALL-SMITH - [DOCKET NO. 433]**

Upon consideration of the *Amended Motion for Relief from Stay* (the "Motion") [Docket No. 433] filed by Virginia Springall-Smith ("Ms. Smith"), and good cause appearing,

IT IS HEREBY ORDERED THAT

¹ The Debtors in these cases, along with their case numbers are: Heritage Land Company, LLC (Case No. 09-14778); The Rhodes Companies, LLC (Case No. 09-14814); Tribes Holdings, LLC (Case No. 09-14817); Apache Framing, LLC (Case No. 09-14818); Geronimo Plumbing LLC (Case No. 09-14820); Gung-Ho Concrete LLC (Case No. 09-14822); Bravo, Inc. (Case No. 09-14825); Elkhorn Partners, A Nevada Limited Partnership (Case No. 09-14828); Six Feathers Holdings, LLC (Case No. 09-14833); Elkhorn Investments, Inc. (Case No. 09-14837); Jarupa, LLC (Case No. 09-14839); Rhodes Realty, Inc. (Case No. 09-14841); C & J Holdings, Inc. (Case No. 09-14843); Rhodes Ranch General Partnership (Case No. 09-14844); Rhodes Design and Development Corporation (Case No. 09-14846); Parcel 20, LLC (Case No. 09-14848); Tuscany Acquisitions IV, LLC (Case No. 09-14849); Tuscany Acquisitions III, LLC (Case No. 09-14850); Tuscany Acquisitions II, LLC (Case No. 09-14852); Tuscany Acquisitions, LLC (Case No. 09-14853); Rhodes Ranch Golf and Country Club, LLC (Case No. 09-14854); Overflow, LP (Case No. 09-14856); Wallboard, LP (Case No. 09-14858); Jackknife, LP (Case No. 09-14860); Batcave, LP (Case No. 09-14861); Chalkline, LP (Case No. 09-14862); Glynda, LP (Case No. 09-14865); Tick, LP (Case No. 09-14866); Rhodes Arizona Properties, LLC (Case No. 09-14868); Rhodes Homes Arizona, L.L.C. (Case No. 09-14882); Tuscany Golf Country Club, LLC (Case No. 09-14884); and Pinnacle Grading, LLC (Case No. 09-14887).

1. The Motion is granted as set forth herein.

2. The automatic stay under section 362 of the Bankruptcy Code shall be modified to permit Ms. Smith to prosecute the action entitled *Virginia Springall-Smith v. Gung-Ho Concrete, LLC et. al*, currently pending in Clark County, Nevada, Case Number A 09-593034-C, in order to allow Ms. Smith to liquidate her claim and pursue any recovery from insurance proceeds only. Ms. Smith may not file a claim against the estate or seek any recovery from the Debtor, and expressly waives any and all right to distribution from the Debtor's estate.

APPROVED ~~DISAPPROVED~~:

DATED this 19th day of October 2009.

By: 

UNITED STATES TRUSTEE

August Landis

Office of the United States Trustee

300 Las Vegas Blvd, S., Ste. 4300

Las Vegas, NV 89101

Prepared and submitted by:

DATED this 19th day of October 2009.

THOMAS E. CROWE PROFESSIONAL
LAW CORPORATION

By: /s/ Thomas E. Crowe

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LR 9021 Certification

In accordance with LR 9021, counsel submitting this document certifies as follows (check one):

☐ The court has waived the requirement of approval under LR 9021.

☒ No parties appeared or filed written objections, and there is no trustee appointed in the case.

☐ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and any trustee appointed in this case, and each has approved or disapproved the order, or failed to respond, as indicated below.

Submitted by:

DATED this 23rd day of October 2009.

By: /s/ Zachariah Larson

LARSON & STEPHENS

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EXHIBIT 1